

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH CASE NO. N2006070443

DECISION

Administrative Law Judge (ALJ) Erlinda G. Shrenger, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on November 27 through December 1, 2006, and January 16, 18, and 19, 2007, in Los Angeles, California.

Attorney Chike G. Onyia of Martin & Martin, represented Petitioner (Student). Student's mother (Mother) attended the hearing accompanied by Student's uncle.

Attorney Angela Gordon of Fagen Friedman & Fulfrost, represented Respondent Los Angeles Unified School District (District). District due process specialists, Cynthia Shimizu and Lisa Kendrick also attended the hearing at various times.

Student's request for due process hearing was filed on July 17, 2006. OAH set a due processing hearing for September 7, 2006. The parties requested a continuance of the hearing, which was granted on August 28, 2006.

At the conclusion of the hearing on January 19, 2007, the record was held open for the parties to file written closing briefs. Closing briefs were timely received from both parties and marked for identification as Student's exhibit 40 and District's exhibit KK, respectively. The record was closed and the case was submitted on March 1, 2007.

ISSUES¹

1. Did the District deny Student a free appropriate public education (FAPE) for the 2005 extended school year (ESY) and the 2005-2006 school year by:
 - A. Refusing to administer his gastrostomy tube feedings at school using the plunge method?
 - B. Failing to offer a placement in a nonpublic school that allows gastrostomy tube feedings by the plunge method or, alternatively, a home school program?
2. If the District denied Student a FAPE, is Student entitled to compensatory education in the form of language and speech, occupational therapy, physical therapy, adapted physical education, assisted technology, educational therapy, and/or transportation?

PARTIES' CONTENTIONS

Student is fed exclusively through a gastrostomy tube (G-tube).² Student contends he was denied a FAPE by the District's failure to offer a placement that would allow his G-tube feeding at school by the plunge method.³ Because of the District's refusal to provide his feedings by the plunge method, Student contends he is unable to attend school and access his curriculum. Student contends the plunge method is his physician-prescribed method of feeding. Student contends any offer of FAPE by the District should include placement in a nonpublic school that allows the plunge method of G-tube feeding or, alternatively, a home school program. Student also contends he is entitled to compensatory education.

The District contends Student has not provided a doctor's prescription that authorizes his G-tube feeding at school by the plunge method. The District contends it can provide Student's G-tube feedings at school by the gravity method,⁴ which is in accordance with guidelines for G-tube feeding developed by the District and the California Department of Education. The District contends placement in a nonpublic school or home instruction is not appropriate for Student nor supported by the evidence. The District contends Student is not entitled to compensatory education.

¹ Based on the evidence presented at hearing, Issue No. 1 has been reframed for purposes of this Decision.

² A gastrostomy is a surgical opening into the stomach through the surface of the abdomen. A plastic device (gastrostomy button) is inserted into the opening and remains in place at all times, and is capped by a safety plug between feedings. Generally speaking, gastrostomy tube feeding is used for persons who are unable to be fed by mouth.

³ See, Factual Finding 5.

⁴ See, Factual Findings 18-21.

FACTUAL FINDINGS

1. Student is a nine-year-old boy who resides within the District with Mother and his twin sister. He is eligible for special education and related services on the basis of multiple disabilities-orthopedic, mental retardation, and other health impairment. Student has cerebral palsy, mental retardation, and developmental delays. He is nonverbal but ambulatory and fairly functional.

2. Student was born premature at 26 and 1/2 weeks, resulting in severe medical complications. Student had a history of multiple surgeries in the first six months of life, including fundoplication⁵ and insertion of a G-tube and tracheostomy tube.⁶ Student was hospitalized for the first 16 months of his life before Mother could bring him home for the first time. As a result of his medical complications, Student's swallowing muscles did not develop normally. Consequently, Student is fed exclusively by G-tube.

Student's Unique Feeding Needs

3. Although Student has many unique educational and medical needs, the only "unique need" at issue in this case relates to the method for giving Student's G-tube feedings at school.

4. Mother feeds Student four times per day, at 7:30 a.m., 12 noon, 4:00 p.m., and 8:00 p.m. The only feeding that occurs during regular school hours is the 12 noon meal.

5. Mother currently feeds Student a homemade mixture of pureed foods through his G-tube by using the syringe plunger to push the food through the tubing (the plunge method). The District's school physician, Dr. Rose Mercado, observed Mother give Student his usual lunch diet by the plunge method during a home visit on October 13, 2006. In her report dated October 13, 2006, Dr. Mercado described the feeding process she observed as follows: "Mother connected the tubing and syringe and skillfully poured the pureed food mixture almost to the top of the syringe. She then placed the plunger in position and proceeded to apply intermittent pressure with the plunger until the syringe was emptied. She repeated the above steps until all the food mixture had been given. . . . The entire feeding took approximately fifteen minutes during which time [Student] showed no signs of discomfort or impatience."

6. Mother makes the pureed food by blending a protein (e.g., cooked meat), whole grain (e.g., brown rice or cous-cous), and raw vegetables, in a high-speed blender. The pureed food mixture has a thick consistency. Mother adds sufficient liquid to the

⁵ Fundoplication is the surgical procedure of folding the upper part of the stomach around the esophagus to prevent reflux.

⁶ A tracheostomy tube is used to facilitate breathing through an opening in the trachea. Student's tracheostomy tube was removed in August 2005.

mixture to get it to a consistency that can be poured into the syringe. Mother has fed Student a diet of homemade pureed food for the last six-to-seven years. On this diet, Student has generally been healthy, well-nourished, and within the normal ranges for height and weight. Since feeding Student this diet, Mother has observed that Student's hospitalizations and doctor visits for illness have decreased, and his medical appointments now are primarily for routine checkups.

7. Mother started feeding Student pureed food because Student had problems with reflux and regurgitation of his stomach contents into his esophagus when he was fed a liquid diet. Because of the heavier consistency of the pureed food, Student no longer had reflux and regurgitation problems, nor did he have problems with diarrhea and constipation as he did with the liquid diet. When Student was on a liquid diet of Pediasure, Student was overweight and required nine different nutritional supplements. Mother believes Student cannot tolerate a liquid diet. Mother has tried several different nutritional methods. Student has been healthy on her pureed food mixture. Mother sees no reason to put Student's health at risk by altering her current feeding regimen or trying another method of feeding.

District's Offer of FAPE for the 2005 ESY and 2005-2006 School Year

8. The District made an offer of FAPE to Student for the 2005 ESY and 2005-2006 school year at an individualized education program meeting (IEP) held on March 8, 2005. However, the only aspect of the District's FAPE offer at issue in this case is placement. Student disagrees with the placement offered by the District on the basis that the District will not use the plunge method to provide Student's G-tube feedings at school.

9. At the March 8, 2005 IEP meeting, the IEP team's offer of placement was a special day program for children with multiple disabilities on a special education campus. At the time of the March 8, 2005 IEP meeting, Student was attending Sellery Special Education Center (Sellery). The IEP team recommended Student should continue at Sellery for the remainder of the 2004-2005 school year, the 2005 ESY, and through the 2005-2006 school year until his next triennial IEP scheduled for January 2006. Mother did not consent to the March 8, 2005 IEP, but she did not indicate her refusal to consent was because of Student's G-tube feeding method. At the March 8, 2005 IEP meeting, Mother stated that she wanted Student fed pureed food that she would provide. Mother agreed to provide the necessary paperwork from Student's doctor.

10. In mid-May 2005, Mother withdrew Student from Sellery because of an incident in which Student's bus brought him home one hour and forty minutes late from school. The school was unable to contact or locate Student's bus during the one hour and forty-minute period. The bus was late bringing Student home from school because it had additional children to transport that day. However, Student's safety was never in danger because his healthcare assistant, Magda James, was with him at all times on the bus.

11. Mother did not enroll Student in the 2005 ESY program at Sellery as offered in the March 8, 2005 IEP. After the bus incident, Mother would not allow Student to be

transported by the school bus again. Mother spent the summer of 2005 trying to find an alternative school site that would provide private transportation. Discussions continued between Mother and the District, through their respective attorneys, regarding Student's placement for the 2005-2006 school year.⁷

12. By letter dated September 1, 2005, the District supplemented and clarified the March 8, 2005 IEP by offering, among other things, placement at Willenburg Special Education Center (Willenburg) in the multiple disabilities classroom for the 2005-2006 school year and the 2006 ESY. Due process specialist Cynthia Shimizu explained that Willenburg was offered as another placement for Student to address Mother's concerns about transportation at Sellery. Ms. Shimizu also related that Mother could have enrolled Student at Willenburg with the District's letter dated September 1, 2005.

13. Mother did not enroll Student in school during the fall semester of the 2005-2006 school year nor did she present the District with any concerns regarding feeding method as a reason for not enrolling Student in school.

14. On January 24, 2006, Mother was called before the Student Attendance Review Board (SARB) to discuss Student's non-attendance in school. At the conclusion of the meeting, the SARB ordered Mother to "to fulfill legal obligations to see that the student attends school daily and on time unless legitimately ill." Mother indicated she agreed to the recommendations of SARB and would cooperate.

15. On February 17, 2006, the District held an IEP meeting. Patricia Bowman is the Principal at Sellery and was the Administrator at the February 17, 2006 IEP meeting. Ms. Bowman testified credibly that the main concern of the IEP team was to get as many services to Student and get him back to school as quickly as possible, and to do updated assessments. At the time of the February 17, 2006 IEP meeting, Student had been out of school for approximately eight months, dating back to May 2005. Ms. Bowman testified that the offer of placement was not indicated on the February 17, 2006 IEP document, but it was understood the placement would be Sellery. On the IEP document, Sellery was designated as Student's "Assigned School." Mother did not request a nonpublic school nor the plunge method of feeding at the February 17, 2006 IEP meeting. However, Mother again requested that Student be fed pureed food that she would provide, and she agreed to provide doctor protocols as necessary. Mother signed the February 17, 2006 IEP, indicating her consent. Mother testified she enrolled Student at Sellery following the February 17, 2006 IEP meeting.

16. On April 28, 2006, the District held an IEP meeting. At this meeting, Mother told the IEP team that Student was not in attendance at school because of the District's refusal to administer feedings pursuant to the prescription she obtained from a doctor, which

⁷ During the hearing, both parties raised objections to evidence relating to the informal discussions that, like in this case, typically ensue between IEP meetings where the parties attempt to "settle" any outstanding or unresolved issues. For purposes of this Decision, such evidence was considered in accordance with California Evidence Code section 1152.

Mother claimed she ordered pureed foods by the plunge method. Mother presented the IEP team with a prescription dated January 25, 2006. Mother obtained the prescription from Student's pulmonologist⁸ the day after the SARB meeting. The prescription orders Student to be fed 20-ounces of pureed food provided by Mother. But the prescription does not specify a method of G-tube feeding; it only states: "Give all via bolus to GT [G-tube] using 60cc syringe." The IEP team again recommended a placement in a special day program at a special education center. Mother did not consent to the April 28, 2006 IEP.

17. In sum, the District's offer of placement for the 2005 ESY and the 2005-2006 school year was a special day program for children with multiple disabilities at a District special education center (either Sellery or Willenburg). Student contends the placement offered by the District denied him a FAPE because of the District's refusal to allow Student's G-tube feedings at school by the plunge method.

District Guidelines for G-Tube Feeding

18. The District's general guidelines for G-tube feeding in a school setting are set forth in a document entitled, "Gastrostomy Button Feeding: Bolus Method" (District Guidelines). The District Guidelines state, in pertinent part: "A student may receive a gastrostomy button feeding by the bolus method. This is a specific amount of feeding given at one time. The bolus is administered via a syringe barrel that fits into an extension set feeding port and enters the stomach by gravity." Under the District Guidelines, the equipment to be provided by the parent includes a 60cc syringe with catheter tip, appropriate button tubing set, and prescribed formula or pureed food. The procedure for G-tube feeding under the District Guidelines includes the following steps:

7. Insert the appropriate extension tubing set.
8. Attach 60cc syringe barrel (without plunger) to bolus feeding port.
9. Pour formula or pureed food into syringe barrel, holding syringe at stomach level.
10. Raise syringe 3 to 6 inches above stomach level.
11. Allow fluid to flow slowly and continue to add liquid until feeding is completed.

19. The District Guidelines are consistent with the "Guidelines and Procedures for Meeting the Specialized Physical Healthcare Needs of Pupils" (CDE Guidelines) developed by the California Department of Education (CDE). The CDE Guidelines address "the accepted procedures to use when specialized health care services are provided that have been approved by the pupil's primary care provider." The CDE Guidelines further state: "A panel of pediatricians and nurses reviewed these procedures. After much deliberation the panel recommended including only those procedures that, in their professional opinion, do not jeopardize the pupil's health and can be safely provided at school." The CDE Guidelines

⁸ A pulmonologist is a physician who specializes in the diagnosis and treatment of respiratory disorders.

contain three procedures concerning G-tube feeding: (1) Gastrostomy Tube/Button: Slow Drip Feeding Method or Pump, (2) Gastrostomy Tube/Button: Syringe Feeding, and (3) Gastrostomy Tube Reinsertion. In the CDE Guidelines, the procedure for “Syringe Feeding” does not involve use of the syringe plunger to push the food through the tubing. Instead, the syringe is held three to six inches above stomach level so that the flow of food is regulated by gravity.⁹

20. Under both the District Guidelines and the CDE Guidelines for G-tube feeding using a syringe, the syringe plunger is not used to push the food through the extension tubing but, rather, the food flows through the tubing by gravity (the gravity method).

21. G-tube feedings in a school setting require a physician’s prescription, which must be renewed annually.

Refusal to Allow the Plunge Method Did Not Cause a Denial of FAPE

22. “Related services” are supportive services as may be required to assist a child to benefit from special education. G-tube feedings are considered “specialized physical health care services,” which are services prescribed by the child’s physician and are necessary during the school day to enable the child to attend school.¹⁰

23. As previously noted, Student contends he was denied a FAPE because the District did not offer a placement that allows G-tube feedings using the plunge method.

24. The District was not required to provide the plunge method of G-tube feeding. No evidence was presented that Student had a physician’s prescription authorizing the plunge method. Mother provided the District with a prescription dated January 25, 2006. However, the prescription does not specify the plunge method of feeding. Student’s own witness, Dr. Shaheen Idries, assumed the prescription calls for the gravity method of feeding. Student’s contention that the plunge method was his physician-prescribed method of feeding was not established by the evidence.

25. Student did not establish, by sufficient or persuasive evidence, that the plunge method is the only viable method of feeding Student at school or that he is unable to attend school without the plunge method.

26. Dr. Rose Mercado is the District’s school physician. She has worked for the District for 17 years. Dr. Mercado graduated from medical school in 1985 from the University of Texas at Houston. She did a pediatric residency at Children’s Hospital of Los

⁹ In his closing brief, Student requests that “all evidence introduced during the hearing by the District with respect to any alleged policy of the CDE regarding G-Tube feeding by gravity only” be stricken from the record as “fraudulent evidence.” Student’s request is considered as an untimely Motion to Strike, and denied. Exhibit A attached to Student’s closing brief in support of the Motion to Strike will not be considered in this Decision.

¹⁰ See, Legal Conclusions 3, 4, and 5.

Angeles (CHLA). She considers herself a general pediatrician. She is experienced working with students who are fed by G-tube. As a school physician, Dr. Mercado provides consultative services requested by nurses at different schools. She is qualified to make recommendations regarding G-tube feedings based on her general pediatric training and work experience.

27. As previously noted in Factual Finding 5, above, on October 13, 2006, Dr. Mercado made a home visit to observe Student's feeding by Mother using the plunge method. Dr. Mercado made the visit because she was asked to make a recommendation as to how Student could be fed at school. The home visit was the second time Dr. Mercado met Student. The first time was in 2002 when Student (then five years old) and his parents met with Dr. Mercado in her office so she could do an update on his medical status. Dr. Mercado is familiar with Student's medical history. In developing her current recommendation, Dr. Mercado also consulted with the medical personnel who staff the gastrostomy feeding clinic of the gastrointestinal department at CHLA. Dr. Mercado consulted CHLA because of its expertise with G-tube feedings. Dr. Mercado was advised the plunging method is neither recommended nor used by the clinic staff at CHLA, and the recommended methods for such feedings are either by a pump or by gravity. Dr. Mercado was further advised that plunging was unsafe because of the risk of stomach distention and regurgitation.

28. In Dr. Mercado's opinion, there are "no medical contraindications to [Student] returning to a center-based program." Dr. Mercado believes Student can be fed his pureed food diet at school using the gravity method by providing "several feeds of more diluted pureed mixture." Mother feeds Student four times per day, and the only meal that occurs during school hours is the 12 noon feeding. Dr. Mercado suggests dividing the lunch meal into two feeds (e.g., at 10:30 a.m. and 2:00 p.m.), with each feed consisting of 10-ounces of pureed food mixture diluted with 10-ounces of water or other liquid allowing for the consistency to be given by G-tube using the gravity method. Dr. Mercado believes this would maintain Student's caloric intake the same as with his four meals per day, and take minimal additional time away from his instructional program. Dr. Mercado's recommendation requires consultation between the District and Student's private physicians so there can be mutual collaboration to determine the exact specifications for Student's G-tube feedings at school, such as determining the ratio of pureed food to liquid to achieve the appropriate consistency of the pureed food mixture, the timing of the feedings, the number of feedings, etc. Dr. Mercado testified she would have liked to consult with Student's gastrointestinal physician in developing her recommendation, but was unable to do so because Mother would not provide authorization.

29. Dr. Shaheen Idries is Student's gastrointestinal physician. Dr. Idries obtained her medical degree in 1985 from Dow Medical School in Pakistan, and obtained her license as a medical doctor in California in 1992. She completed her pediatric residency at Winthrop Medical School in Long Island, New York, and transferred to U.C. Irvine for the third year of residency. Dr. Idries specializes in pediatric gastroenterology, with a focus on gastrointestinal disorders. She currently works for Pediatric Subspecialty Incorporated

(PSI), which is affiliated with Children's Hospital of Orange County. She has worked for PSI for 10 years.

30. Dr. Idries has seen Student in two separate office visits. The first visit was in April 2006 and lasted about one hour. The purpose of the visit was to help Mother facilitate Student's enrollment in public school. Dr. Idries believes the plunge method is unsafe. She tried to discourage Mother from demanding that the plunge method be applied at school. Dr. Idries suggested that Mother try blending banana with Pediasure to a consistency that could flow by gravity. The second visit was in September 2006 and lasted less than one hour. During that visit, Mother reported that when she fed Student Pediasure thickened with banana, Student had frequent regurgitation and sour burps, and his stomach had to be decompressed frequently. After discussing other feeding options with Mother, Dr. Idries developed a proposal for Student's feeding at school. Dr. Idries has not seen Student since the September 2006 visit.

31. Dr. Idries recommended that Mother train one of Student's caretakers at school to perform the plunge method of feeding Mother uses at home. If the specific caretaker trained by Mother is absent, then Mother is responsible for feeding Student at school that day. Dr. Idries recognizes that the plunge method is unsafe. However, Mother has been applying the method for many years and Student is staying healthy. Dr. Idries believes the plunge method can be applied safely only by someone who is really involved and familiar with Student. Dr. Idries would not recommend plunge feeding by the school except by the specific individual trained by Mother. If that specific individual is unavailable, Dr. Idries recommends that either Student should not go to school that day, Student should not be fed at school, or Mother should come to school to feed Student. Dr. Idries did not consult anyone from the District in developing her recommendation.

32. Dr. Idries's testimony does not establish Student's claim that the plunge method is the only way he can be fed at school. Dr. Idries admitted that the plunge method is not the only medically viable option for feeding Student at school. She did not consult with the District to determine if her proposal of having Mother train school personnel in the plunge method was feasible. Dr. Idries testified she has no experience with educational placements. Dr. Idries has never observed Mother feed Student using the plunge method. Dr. Idries's recommendation was based primarily on information provided by Mother. Dr. Idries does not know the consistency of the pureed food used by Mother, nor any of the other specifications of Mother's method of plunge feeding. Aside from Mother's reports, Dr. Idries has no independent information about the nature and extent of any problem Student has with regurgitation. When viewed in its entirety, Dr. Idries's recommendation was not persuasive.

33. Dr. Mercado testified persuasively that Mother's success with the plunge method is due to the fact that she knows her son better than anyone, and over the years has become skilled and experienced at determining the amount of pressure required to safely plunge the food through the tube. The plunge method is unsafe in a school setting because there is no guaranteed continuity of the same person administering the feeding. Mother's

skill is unique and so important to the safe use of the plunge method for Student that a key component of Dr. Idries's recommendation is that Student's feedings by the plunge method should only be given by Mother or the specific person trained by her.

34. Mother may be particularly skilled at using the plunge method, in part, because she works as a certified nurse assistant (CNA), where her duties include assisting licensed vocational nurses with feeding G-tube patients. However, as a CNA, Mother has not used the plunge method to feed any of her G-tube patients. Mother testified she has trained the nurses who work with Student at home to use the plunge method, and they have been able to safely feed Student. This testimony was not persuasive to show that Mother can similarly train school personnel. Mother showed Magda James, Student's healthcare aide at Sellery, how to feed him pureed foods by the plunge method. Even after Mother's demonstration, Ms. James testified she was "uncomfortable" when she tried to feed Student the pureed food by the plunge method. Ms. James could not complete the feeding, and she ended up giving Student juice by the gravity method instead. Ms. James testified she did not feed Student by the plunge method at any time thereafter.

35. Mother does not want Student to be fed other than by the plunge method because she does not want to put her son's health at risk. The evidence did not establish that Student currently suffers from reflux or regurgitation, or exhibits side effects associated with reflux or regurgitation. The evidence established that Student is healthy and well-nourished. Mother can prevent or reduce the risk to Student's health by allowing Dr. Mercado to consult with Dr. Idries in developing a method for giving Student's G-tube feedings at school. Under the care and supervision of a gastrointestinal doctor, "trial and error" can safely be employed to find a method for feeding Student at school.

36. In sum, the District did not deny Student a FAPE by its refusal to allow the plunge method of feeding at school. The evidence did not establish that Student had a physician prescription authorizing the plunge method of feeding. Student did not establish his claim that the plunge method is the only way he can be fed through his G-tube at school. Nor did the evidence establish Student's claim that he is unable to attend school unless he is allowed to be fed by the plunge method.

The District's Offer of Placement was Appropriate

37. Student has been eligible for special education since November 16, 2000. During the 2004-2005 school year, Student was a second grader at Sellery in a special day program for children with multiple disabilities. Student also attended first grade at Sellery. The Sellery campus has pupils with autism, cerebral palsy, multiple disabled, multiple disabled-severe, mental retardation-severe, and G-tube fed. Sellery serves "moderate to severe" pupils. The multiple disabled class at Sellery has children whose main disability is a physical disability, primarily orthopedic.

38. Student's unique feeding needs can be accommodated in the District's special day program for children with multiple disabilities. Sellery has appropriate personnel to

administer the feedings. When Student previously attended Sellery, his healthcare assistant, Magda James, provided his G-tube feedings using the gravity method. Student's G-tube feedings are not an obstacle to his attendance at school. Student is healthy, well-nourished, and would benefit from attending school with other pupils.

Nonpublic School

39. A placement in a nonpublic school is appropriate "if no appropriate public education program is available."¹¹

40. Student contends the District denied him a FAPE "by failing to place him in a nonpublic school that could feed him via G-Tube using the plunge method." This contention was not established by the evidence. The District was not required to provide the plunge method of feeding as a related service. (See, Factual Findings 22-36, above.) The District has offered a placement that can accommodate his unique feeding needs during school hours. (See, Factual Findings 37-38, above.)

41. Student's evidence did not establish there is a nonpublic school that will automatically allow him to be fed by the plunge method. Student offered the testimony of Renee Kelly Williams, who is the owner of Tijay Renee Academy School (TRAS), a nonpublic school for grades 3 to 12. Ms. Williams has owned TRAS for five or six years. Ms. Williams testified TRAS accepts children who are fed by G-tube. In Student's case, TRAS would hire a certified nurse to provide his feeding by the plunge method. Ms. Williams also testified a nonpublic school, such as TRAS, must implement an IEP as written when accepting a student from the District. Ms. Williams could not say what her school would do in Student's situation, where Student wants the plunge method but the District's policy does not allow it. Viewed as a whole, Ms. Williams's testimony was not persuasive to establish Student's claim.

42. Maria Davis is the owner of Carousel School, a nonpublic school. She has been the owner of Carousel for 21 years. Carousel serves children who are disabled, delayed, or at risk for delay, from birth through high school. Ms. Davis is familiar with Student's case, as Mother previously sought to enroll Student at Carousel. Student could not be enrolled because he did not have a letter from the District. Ms. Davis testified that Carousel cannot meet Student's needs because it does not have the staff to serve a child with Student's level of need. Carousel does not have the personnel to do G-tube feedings. Ms. Davis testified the decision not to enroll Student was based on the determination that Carousel could not address his needs. Ms. Davis testified if the District's doctor determines the plunge method of feeding is unsafe, she would not implement it at Carousel.

43. In sum, Student did not establish his claim that the District denied him a FAPE by failing to offer placement in a nonpublic school that allows the plunge method of feeding.

¹¹ See, Legal Conclusion 7, below.

Home School Program

44. Student did not establish a home school program is an appropriate placement. Jan Merrithew is employed by the District as the Administrator for Home Hospital. She has been in that position for the last six years. Home hospital is an interim placement primarily for children who are too sick or injured to attend school. It is intended only as a temporary placement. If a District offers a program the IEP team determines is appropriate, then home schooling would not be appropriate. The evidence established that Student is healthy and would benefit from attendance at school. Dr. Mercado testified persuasively that there are “no medical contraindications” to Student returning to school. Mother also testified that her preference is to have Student attend school in a classroom setting.

Compensatory Education

45. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE.¹²

46. Mother testified at length regarding the compensatory education time she contends is owed to Student for the 2005 ESY and the 2005-2006 school year (SY). Mother contends Student is owed compensatory education for the time he was unable attend school because of the District’s refusal to provide the plunge method of G-tube feeding. Mother asserted that the compensatory education time owed to Student is for educational therapy (80 hours for 2005 ESY and 1,116 hours for 2005-06 SY), physical therapy (240 minutes for 2005 ESY and 2,160 minutes for 2005-06 SY), adapted physical education (120 minutes for ESY 2005 and 1,080 minutes for 2005-06 SY), speech and language (120 minutes for ESY 2005 and 1,080 minutes for 2005-06 SY), and occupational therapy (510 minutes for the period February 18, 2006, to the end of the 2005-06 SY).

LEGAL CONCLUSIONS

Applicable Law

1. Student has the burden proving the essential elements of his claims. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs. (20 U.S.C. § 1400; Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the state involved, and

¹² See, Legal Conclusion 9.

conform to the child's IEP. (20 U.S.C. § 1401, subd. (9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401, subd. (29).) Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.)

3. The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).) In California, related services are referred to as "designated instruction and services" (DIS). (Ed. Code, § 56363, subd. (a).) Related services include "school health services . . . provided by a qualified school nurse or other qualified person." (34 Code Fed. Regs. § 300.34(c)(13).) Health and nursing services are specifically included as DIS services in California. (Ed. Code, § 56363, subd. (b)(12).) Health and nursing DIS services may include providing services by qualified personnel and managing the individual's health problems on the school site. (Cal. Code Regs., tit. 5, § 3051.12, subds. (a)(1), (2).)

4. "Specialized physical health care services" means those health services prescribed by the child's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the child to attend school." (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(A).) "Specialized physical health care" may be provided as described in Education Code Section 49423.5." (Cal. Code Regs., tit. 5, § 3051.12, subd. (b).) Specialized physical health care services are to be provided pursuant to standardized procedures, which are "protocols and procedures developed through collaboration among school or hospital administrators and health professionals, including licensed physicians and surgeons and nurses." (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(B).)

5. Gastric tube feeding is a specialized physical health care service. (Ed. Code, § 49423.5, subd. (d).)

6. The Supreme Court's decision in *Board of Education of the Hendrick Hudson School District v. Rowley* (1982) 458 U.S. 176, established a two-prong analysis to determine whether a FAPE was provided to a student. (*Id.* at p. 200 [*Rowley*].) First, the court must determine whether the school system has complied with the procedures set forth in the IDEA. The second prong of the *Rowley* test requires the court to assess whether the IEP was designed to meet the child's unique needs, reasonably calculated to enable the child to receive educational benefit, and comported with the child's IEP. (*Capistrano Unified Sch. Dist. v. Wartenburg* (9th Cir. 1995) 59 F.3d 884, 893, citing *Rowley*, *supra*, 458 U.S. at pp. 188-189, 200-201.)

7. Education Code section 56365, subdivision (a), provides in pertinent part: "Services provided by . . . nonpublic, nonsectarian agencies . . . shall be available. These services shall be provided . . . under contract with the district . . . to provide the appropriate

special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs *if no appropriate public education program is available.*” (Emphasis added).

8. An expert’s credibility may be evaluated by looking to his or her qualifications. (*Grimshaw v. Ford Motor. Co.* (1981) 119 Cal.App.3d 757, 786.) It may also be evaluated by examining the reasons and factual data upon which the expert’s opinions are based. (*Griffith v. County of Los Angeles* (1968) 267 Cal.App.2d 837, 847.)

9. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Id.* at p. 1497.) To obtain relief in the form of compensatory education, the student must present specific evidence as to how the compensatory education should be calculated. (*Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

Determination of the Issues

Did the District deny Student a FAPE by refusing to administer his G-tube feeding during school hours using the plunge method?

10. Based on Factual Findings 22-36 and Legal Conclusions 3-5 and 8, for the 2005 ESY and the 2005-2006 school year, the District did not deny Student a FAPE by refusing to administer his G-tube feeding during school hours using the plunge method. The District was not authorized to use the plunge method because Student did not have a prescription for that method of feeding.

11. The evidence did not establish that Student is unable to attend school due to the District’s refusal to give his feedings at school by the plunge method. The evidence did not establish Student has a medical reason for not attending school. On the contrary, the evidence clearly established that Student is healthy and well-nourished and would benefit from interacting with peers in a classroom environment. The evidence established that the placement offered by the District (i.e., a special day program for children with multiple disabilities at a special education center) can accommodate Student’s G-tube feeding needs. As established by Dr. Mercado’s testimony, the District is willing and able to work with Mother and Student’s physicians to determine the appropriate method for feeding Student at school in accordance with Student’s medical needs and the District Guidelines. Mother’s refusal to authorize the District to communicate with Student’s private physicians, such as Dr. Idries, appears to be a major obstacle to resolving Student’s feeding issues at school.

12. Mother testified that she does not want to put her son’s health at risk by trying different methods of feeding (such as the District’s proposal to give two feeds of the pureed mixture diluted with water or other liquid). Yet, she is willing to allow school personnel to

feed her son using the plunge method, even though the plunge method is considered unsafe by medical professionals, including Student's own gastrointestinal physician, Dr. Idries. It was not established by the evidence that Student's health would be placed at heightened risk by trying different methods of feeding to determine the optimal feeding method at school. Any such risk is reduced or eliminated by allowing collaboration between the District's physician and Student's private physicians.

13. The evidence did not establish that Student's nonattendance in school was due to the District's refusal to administer his G-tube feedings by the plunge method. Mother initially withdrew Student from school in May 2005 because of a transportation issue. She did not enroll her son in the ESY 2005 program at Sellery. Nor did she enroll Student in school at the start of the 2005-2006 school year, despite the District's offer to change the offered placement from Sellery to Willenburg in an effort to address Mother's concerns about transportation. Mother did not raise the plunge method as a basis for disagreement with Student's IEPs until the April 28, 2006 IEP. Prior to that IEP, the only issue raised by Mother about G-tube feeding was her request to feed Student pureed food that she would provide. If the plunge method was the reason Student was not in school, then the feeding prescription Mother obtained in January 2006 should have indicated the plunge method as Student's prescribed method of feeding, which it does not. Instead, the prescription only mentions the feeding of pureed food that Mother provides, as she requested at the March 8, 2005 IEP.

Did the District deny Student a FAPE by failing to offer placement in a nonpublic school that allows G-tube feeding by the plunge method or, alternatively, a home school program?

14. Based on Factual Findings 39-44 and Legal Conclusion 7, the District did not deny Student a FAPE by not offering a placement in a nonpublic school or a home school program. Student was not entitled to a nonpublic school placement because the District could accommodate his unique feeding needs. A home school program was not appropriate for Student because home schooling is a temporary placement for children who are too ill or injured to attend school. The evidence established there are "no medical contraindications" to Student returning to school. The District's offer of placement in a special day program for children with multiple disabilities was appropriate to meet Student unique feeding needs.

Is Student entitled to compensatory education?

15. As Student was not denied a FAPE for the time periods at issue, Student is not entitled to compensatory education.

ORDER

Student's request for relief is denied.

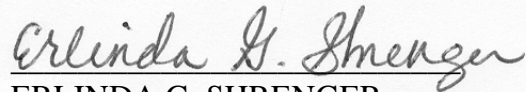
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. The District prevailed on all issues in this matter.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: March 26, 2007



ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings

Special Education Division